

Message Text

UNCLASSIFIED

PAGE 01 BRASIL 05687 01 OF 02 211844Z
ACTION SNM-05

INFO OCT-01 ARA-14 IO-14 ISO-00 L-03 PPTE-00 CA-01
DEAE-00 CIAE-00 INR-10 NSAE-00 /048 W
-----015415 211848Z /41
R 211350Z JUL 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 8350
INFO USMISSION GENEVA

UNCLAS SECTION 1 OF 2 BRASILIA 5687

E.O. 11652: N/A
SUBJECT: NARCOTICS LAWS

REF: (A) STATE 170187;
(B) BRASILIA A-116 OF NOVEMBER 29, 1976

1. THE FOLLOWING RESPONSES REGARDING THE BRAZILIAN
NARCOTICS LEGISLATION (LAW NO. 6,368 OF OCTOBER 21, 1976)
ARE KEYED TO QUESTIONS POSED IN PARA 2, REF A:

2. (SUBPARA 1)--POSSESSION:

(A) THERE IS NO DIFFERENTIATION FOR POSSESSION OF VARIOUS
NARCOTICS.

(B) THE LAW DOES NOT ESTABLISH ANY CRITERION FOR QUALIFI-
CATION OF OFFENSES IN TERMS OF THE AMOUNT FOUND IN POSSESSION
OF ACCUSED PERSONS. IT STATES, HOWEVER, THAT "IN THE
CHARACTERIZATION OF OFFENSES...THE AUTHORITY WILL TAKE INTO
CONSIDERATION THE NATURE AND AMOUNT SEIZED..."

(C) PENALTIES FOR SIMPLE POSSESSION ARE LESS SEVERE THAN THOSE
FOR OTHER NARCOTICS OFFENSES. THE CURRENT LAW, CONTRARY TO
THE EARLIER (1971) LAW, HAS ESTABLISHED A DIFFERENCE
BETWEEN TRAFFICKERS AND INDIVIDUALS APPREHENDED WITH
MARIJUANA OR NARCOTICS FOR PERSONAL USE. WHILE THE
PENALTY FOR THE LATTER HAS BEEN CONSIDERABLY REDUCED,
THE PENALTY FOR THE FORMER HAS BEEN SIGNIFICANTLY
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 BRASIL 05687 01 OF 02 211844Z

INCREASED. SIMPLE POSSESSION IS PUNISHED WITH
IMPRISONMENT FROM SIX MONTHS TO TWO YEARS, PLUS FINE.
RELEASE ON BAIL AND SUSPENSION OF SENTENCE ARE AVAIL-
ABLE FOR VIOLATORS.

3. (SUBPARA 2) TRAFFICKING:

(A) THE LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES INTO

A GENERAL TRAFFICKING OFFENSE. NO DISTINCTION IS MADE BETWEEN THE VARIOUS SUBSTANCES.

(B) PENALTY FOR TRAFFICKING IS IMPRISONMENT FROM THREE TO FIFTEEN YEARS, PLUS FINE FROM 50 TO 360 DAYS/FINE (A SYSTEM BASED ON THE DAILY MINIMUM WAGE, WITH THE EXACT FIGURE LEFT TO THE JUDGE). NEITHER BAIL NOR SUSPENSION OF SENTENCE IS AVAILABLE FOR TRAFFICKERS. CONDITIONAL LIBERTY (PAROLE, AS CONCEIVED IN THE US, DOES NOT EXIST IN BRAZIL) IS POSSIBLE IN THE CASES DEALT WITH IN PARAGRAPH 6 BELOW.

(C) THE ELEMENTS WHICH CONSTITUTE THE OFFENSE ARE ALL THOSE ILLEGAL ACTIONS LISTED IN ARTICLE 12 OF THE LAW (E.G., IMPORT, EXPORT, PREPARE, PRODUCE, SELL, DISPLAY FOR SALE, OFFER, FURNISH, EVEN IF FREE OF CHARGE, HAVE IN STOCK...NARCOTICS OR ANY SUBSTANCE WHICH MAY CAUSE PHYSICAL OR PSHYCHOLOGICAL DEPENDENCE, WITHOUT AUTHORIZATION OR IN DISAGREEMENT WITH LEGAL REGULATIONS). ALL SUCH ACTIONS ARE CONSIDERED, IN PRINCIPLE, ILLEGAL COMMERCIAL ACTIVITIES. THUS, THE ACTIONS OF PURCHASING, KEEPING IN STOCK OR CARRYING ON ONE'S PERSON ONE OF THOSE SUBSTANCES, FOR EXAMPLE, WILL CONSTITUTE ILLEGAL TRAFFICKING IF THE ACCUSED CANNOT PROVE THAT THE SUBSTANCE WAS DESTINED FOR HIS/HER OWN USE. THE LAW, HOWEVER, REQUIRES INTENT AND CRIMINAL KNOWLEDGE AS ESSENTIAL ELEMENTS FOR CONVICTION. THE SAME PENALTY FOR TRAFFICKING WILL BE APPLIED TO THOSE WHO IMPORT, UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BRASIL 05687 01 OF 02 211844Z

EXPORT, PRODUCE, SELL, PURCHASE OR SUPPLY, EVEN IF FREE OF CHARGE, RAW MATERIALS DESTINED FOR THE PRODUCTION OF NARCOTICS, THOSE WHO UTILIZE THEIR OWN PROPOERTY OR PERMIT ITS USE BY OTHERS FOR THE PURPOSE OF CONSUMING OR TRAFFICKING IN NARCOTICS, AND THOSE WHO PROPAGATE TRAFFICKING IN NARCOTICS OR THE USE THEREOF.

(D) CONSPIRACY IS CONSIDERED AN OFFENSE AND THE PENALTY FOR VIOLATORS IS IMPRISONMENT FROM THREE TO TEN YEARS, PLUS FINE. NEITHER BAIL NOR SUSPENSION OF SENTENCE IS AVAILABLE. IF THE ACTION OF TRAFFICKING IS ACTUALLY CONDUCTED, THE PENALTIES FOR CONSPIRACY AND TRAFFICKING MAY BE COMBINED AND ADDED. THE PENALTIES MAY BE INCREASED BY ONE THIRD TO TWO THIRDS IN CASE OF

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 BRASIL 05687 02 OF 02 211852Z
ACTION SNM-05

INFO OCT-01 ARA-14 IO-14 ISO-00 L-03 PPTE-00 CA-01
DEAE-00 CIAE-00 INR-10 NSAE-00 /048 W
-----015550 211912Z /41

R 211350Z JUL 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 8351
INFO USMISSION GENEVA

UNCLAS SECTION 2 OF 2 BRASILIA 5687

INTERNATIONAL TRAFFICKING. RECENT NARCOTICS CON-
VICTION OF US CITIZEN IN RIO DE JANEIRO RESULTED
IN PRISON SENTENCE OF TWENTY YEARS (FIFTENN YEARS FOR
TRAFFICKING PLUS FIVE YEARS FOR INTERNATIONAL
TRAFFICKING).

4. (SUBPARA 3) CULTIVATION, PRODUCTION, ELABORATION:
(A) CULTIVATION OF ANY PLANT FROM WHICH A NARCOTIC
SUBSTANCE CAN BE EXTRACTED IS PROHIBITED, EXCEPT FOR
THERAPEUTIC OR SCIENTIFIC PURPOSES. IN THIS CASE
PREVIOUS AUTHORIZATION BY BRAZILIAN AUTHORITIES IS
MANDATORY. PENALTY FOR VIOLATION OF THIS PROVISION
IS THE SAME AS THAT FOR TRAFFICKING.
(B) NO LIMITATION ON PRODUCTION HAS YET BEEN ESTABLISHED,
ALTHOUGH THE LAW PROVIDES THAT THE MINISTRY OF HEALTH IS
RESPONSIBLE FOR ISSUING REGULATIONS ON LIMITATION,
INSPECTION AND CONTROL OF PRODUCTION. CONTROL IS
EXERCISED BY THE FEDERAL AND STATE DRUG LAW ENFORCEMENT
AGENCIES AND HEALTH AUTHORITIES.
(C) PENALTY FOR ELEBORATING NARCOTIC SUBSTANCES FROM
PLANTS (UNSPECIFIED) IS THE SAME AS FOR TRAFFICKING.

5. (SUBPARA 4) FINANCIAL:
(A) THOSE WHO PROVIDE FINANCIAL SUPPORT FOR ILLEGAL
CULTIVATION, ELABORATION OR TRAFFICKING IN NARCOTICS
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 BRASIL 05687 02 OF 02 211852Z

CAN BE CHARGED WITH VIOLATING THE CONSPIRACY PROVISION
AND, IF THE OFFENSE HAS BEEN ACTUALLY COMMITTED, BE ALSO
CHARGED WITH CO-PARTICIPATION. IN THIS CASE, THE
PENALTY FOR THE CO-PARTICIPANT IS THE SAME AS
FOR THE PRINCIPAL VIOLATOR.
(B) REMITTANCE OF CURRENCY TO OTHER COUNTRIES BY
BOTH INDIVIDUALS AND ORGANIZATIONS IS POSSIBLE ONLY
UNDER CERTAIN CIRCUMSTANCES PROVIDED FOR IN THE LAW

AND UPON AUTHORIZATION BY BRAZILIAN MONETARY AUTHORITIES. FOREIGN BANK ACCOUNTS ARE PROHIBITED FOR BRAZILIANS.

6. (SUBPARA 5) CRIMINAL PROCEDURE:

(A) ALTHOUGH BRAZILIAN LAW PROVIDES THAT JUDICIAL AUTHORITIES MUST BE NOTIFIED OF ANY ARREST IMMEDIATELY, PRACTICE AND COURT RULINGS HAVE ESTABLISHED THAT THIS PERIOD CAN BE EXTENDED UP TO 24 HOURS, WITHIN WHICH PERIOD THE ACCUSED MUST RECEIVE THE NOTICE OF CHARGES. THEREAFTER, THE POLICE HAVE UP TO FIVE DAYS TO PRESENT THE RESULTS OF INVESTIGATIONS TO THE COURT WHENEVER THE ACCUSED WAS ARRESTED IN THE ACT AND IS BEING HELD UNDER DETENTION. WHEN THE ACCUSED IS FREE AWAITING TRIAL, THE POLICE HAVE UP TO 30 DAYS, EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES. AS A SIGNATORY TO THE 1963 VIENNA CONVENTION ON CONSULAR RELATIONS, THE BRAZILIAN GOVERNMENT IS OBLIGED TO ENSURE THAT DETAINED FOREIGN CITIZENS WHO REQUEST IT BE ALLOWED ACCESS TO THEIR CONSUL "WITHOUT DELAY". EMBASSY EXPERIENCE WITH ARREST OF AMERICAN CITIZENS INDICATES THAT BRAZILIAN AUTHORITIES DO NOT RESPONDE CONSISTENTLY TO THIS OBLIGATION. IN SOME CASES, CONSULAR SECTIONS HAVE BEEN NOTIFIED WITHIN A FEW HOURS OF THE ARREST. IN OTHER CASES, CONSULAR OFFICERS HAVE LEARNED OF AN ARREST DAYS LATER

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BRASIL 05687 02 OF 02 211852Z

THROUGH PRESS ACCOUNTS OR OTHR THIRD PARTY SOURCES.

(B) AND (C) EMBASSY'S EXPERIENCE HAS BEEN THAT IN DRUG CASES THE JUDGE USUALLY BRINGS THE MATTER TO TRIAL AND PASSES SENTENCE WITHIN THIRTY DAYS OF THE BEGINNING OF FORMAL LEGAL PROCEDURES. LENGTH OF APPELLATE PROCESS VARIES CONSIDERABLY AND MAY TAKE SEVERAL MONTHS OR LONGER.

(D) FREE LEGAL COUNSEL IS AVAILABLE IF THE DEFENDENT CANNOT AFFORD TO PAY. BRAZILIAN LAW PROVIDES THAT NO ONE CAN BE PROSECUTED WITHOUT A DEFENDER. IN PLACES WHERE PUBLIC DEFENDERS ARE NOT AVAILABLE, THE JUDGE WILL APPOINT A PRIVATE ATTORNEY TO DEFEND THE ACCUSED.

(E) CONDITIONAL LIBERTY, UNDER POLICY SURVEILLANCE, IS POSSIBLE FOR DRUG OFFENDERS:

(I) WHO HAVE SERVED MORE THAN HALF OF THEIR SENTENCE (FOR FIRST TIME OFFENDERS) AND MORE THAN THREE-FOURTHS (FOR RECIDIVISTS),

(II) WHO HAVE HAD GOOD BEHAVIOR IN PRISON,

(III) WHO ARE NO LONGER CONSIDERED DANGEROUS, AND

(IV) WHO HAVE ABILITY TO MAKE AN HONEST LIVING.

(F) THE COURTS TEND TO BE MORE LENIENT IN SENTENCING

MINOR OFFENDERS AND POSSESSORS OF SMALL AMOUNTS OF MARIJUANA FOR PERSONAL USE. ALTHOUGH THERE HAVE BEEN DEPORTATIONS AND EXPULSIONS FOR DRUG OFFENSES, THIS IS NOT A GENERAL PRACTICE. THE LAW PROVIDES THAT A FOREIGNER WHO COMMITS ANY OF THE CRIMES THEREIN DEFINED WILL BE SUBJECT TO EXPULSION. THIS, HOWEVER, WILL OCCUR ONLY AFTER THE SENTENCE HAS BEEN SERVED, UNLESS THE ALIEN'S IMMEDIATE EXPULSION IS DEEMED OF INTEREST TO THE NATIONAL SECURITY.

2. OTHER ASPECTS OF THE CURRENT BRAZILIAN DRUG LAW ARE DEALT WITH IN REF B.

SAYRE

UNCLASSIFIED

UNCLASSIFIED

PAGE 04 BRASIL 05687 02 OF 02 211852Z

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, DRUG TRAFFIC, DRUG SEIZURES
Control Number: n/a
Copy: SINGLE
Draft Date: 21 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BRASIL05687
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780300-0676
Format: TEL
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780735/aaaabddt.tel
Line Count: 243
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 93f6146f-c288-dd11-92da-001cc4696bcc
Office: ACTION SNM
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187, 78 BRASILIA A-116
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1930590
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, BR
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/93f6146f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014